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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957.

No. 49

JOHN L. LEWIS, CHARLES A. OWEN and JOSEPHINE ROCHE, as Trustees of the United Mine Workers of America Welfare and Retirement Fund,
Petitioners,

vs.

QUALITY COAL CORPORATION, a Corporation,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Quality Coal Company, a corporation, respectfully prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on April 25, 1957.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit is set forth in full in the Appendix to this petition. That opinion affirmed a judgment entered by the United States District Court for the Southern District of Indiana, Terre Haute Division. The District Judge did not render a formal opinion.

JURISDICTION.

The judgment of the Court of Appeals for the Seventh Circuit affirming the judgment of the United States District Court for the Southern District of Indiana, Terre Haute Division, was entered on April 25, 1957. A petition for rehearing was denied on May 23, 1957. The jurisdiction of this Court is invoked under 28 U.S.C.A. 1254 (1). Certiorari is prayed on the ground that the decision below conflicts with that of another Court of Appeals and with applicable decisions of this Court.

QUESTIONS PRESENTED.

1) Whether the United States District Court had jurisdiction.

2) Whether summary judgment is proper in an action for specific performance.

STATEMENT OF THE CASE.

This action was commenced by the complaint alleging a certain sum of moneys due the plaintiffs on coal produced for use or for sale by virtue of the defendant signing the National Bituminous Coal Wage Agreement of 1950 and supplements thereto. The plaintiffs are alleged as John L. Lewis, Josephine Roche and Charles A. Owen as Trustees of United Mine Workers of America Welfare and Retirement Fund. Defendant filed notice of the taking of depositions, which was opposed on a motion to vacate, said motion being granted. Defendant filed a motion to dismiss and for judgment on the pleadings and plaintiffs filed a motion for summary judgment and default judgment. At the hearing defendant withdrew its motion for judgment on the pleadings. The United States District Court denied the motion to dismiss and granted the motion

for summary judgment. This ruling was appealed and the judgment of the District Court was affirmed by the United States Court of Appeals, Seventh Circuit.

REASONS FOR ALLOWANCE OF WRIT.

A review on Writ of Certiorari is prayed on the grounds that the Court of Appeals has:

A. Rendered a decision in conflict with the decision of another Court of Appeals on the same matter.

B. Decided a question of general federal law in a way in conflict with applicable decisions of this Court.

A. The Court of Appeals below has rendered a decision in conflict with the decision of another Court of Appeals on the same matter.

The complaint does not state a claim showing that the pleader is entitled to relief in accordance with Rule 8(a)(2) of the Federal Rules of Civil Procedure.

Rule 8(a)(2), F.R.C.P., 28 U. S. C., specifies the contents of a claim for relief relieves the pleader from distinguishing in advance between evidentiary and ultimate facts, but still requires in a practical and sensible way that pleader set out sufficient factual matter to outline the elements of his cause of action or claim, proof of which is essential to recovery.

The requirements of a complaint are a statement of facts showing jurisdiction of the Court, ownership of right by plaintiff, violation of that right, injury resulting to the plaintiff by such violation, and justification for equit-

able relief where that is sought and a demand for relief. *Patten* v. *Dennis*, 134 F. 2d 137.

As the Court stated in *Degener* v. *Hartford*, 92 F. 2d 959:

> "The pleader's conclusions of law or fact unsupported by the basic facts, will not do: and such basic facts must be alleged, not left to inference."

In *Morwayano* v. *Riggs Nat'l Bank of Washington, D.C.*, 184 F. 2d 349, which was a case for breach of an employment contract, the Court held that it was necessary in order to state a cause of action for the appellant to allege facts showing a breach of the agreement by the employer in discharging her, and legal conclusions of the complaint rendered it insufficient.

Note is to be made of the case of *Van Horn* v. *Lewis*, 79 F. Supp. 541, which was decided in 1947. This case held that the United Mine Workers Welfare and Retirement Fund was a public charitable trust. This is completely incongruous in fact and law with paragraph III of the complaint, which states: "The United Mine Workers Welfare and Retirement Fund was created by contract dated March 5, 1950."

The *Van Horn* decision of 1948, therefore, cannot be *res judicata* of a Fund "created by contract dated March 5, 1950." The effect of sustaining the ruling of the lower Court would be to qualify this Fund as a charitable trust without even examining the provisions of the trust agreement, inasmuch as the legal conclusion is before the Court without an examination of the instrument forming the "charitable trust," nor is such set forth *in haec verba*.

B. The Court of Appeals has decided a question of general federal law in a way in conflict with applicable decisions of this Court.

The action seeks specific performance of certain provisions of the National Bituminous Coal Wage Agreement, which is an action equitable in nature; therefore, plaintiffs were not entitled to summary judgment as a matter of law.

The case of *Seaboard Surety Co.* v. *Racine Screw Co.*, 203 F. 2d 532, held that the relief sought in an action for specific performance is equitable and its allowance or refusal rests in the Court's sound discretion. This complaint demands specific performance by the defendant of the payment of 40 cents per ton on coal mined for use or for sale during a stated period. It is not an action in law even though rights are alleged to be based upon a contract. It is an attempt to enforce a trust by specific performance of the National Bituminous Coal Wage Agreement of 1950 and amendments, and the relief allowable is within the sound discretion of the Court.

> "It appears wholly incompatible to say in one breath that a party is entitled to prevail as a matter of law, and in the next, to admit that it is entitled to do so only in the discretion of the court. The two premises cannot stand side by side, as would be the result if Rule 56(c) should be given application in an action for specific performance." *Seaboard Surety Co.* v. *Racine Screw Co.*, 203 F. 2d 532.

The rule of the United States Supreme Court is set forth in the following cases:

> "The power of a court of equity to act is a discretionary one." (*American Federation of Labor* v. *Watson*, 66 S. Ct. 761)

"Modern equity practice has tended away from a procedure based on affidavits and interrogatories, because of its proven insufficiency." (*Eccles* v. *Peoples Bank*, 68 S. Ct. 641, 333 U.S. 426)

Plaintiffs came into the forum as allegedly Trustees of a "charitable trust" and, as such, ask the Court to do equity and to mould its decree to the necessities of the case (*McComb* v. *Goldblatt Bros.*, 166 F. 2d 387), and the full scope of the Court's jurisdiction is to be applied.

CONCLUSION.

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX.

Cale J. Holder, Judge

UNITED STATES DISTRICT COURT
For the Southern District of Indiana
Terre Haute Division

JOHN L. LEWIS, CHARLES A. OWEN and JOSEPHINE ROCHE, as Trustees of the United Mine Workers of America Welfare and Retirement Fund,

Plaintiffs,

v.

QUALITY COAL CORPORATION, a Corporation,

Defendants.

Civil Action No. TH55-C-50

COMPLAINT

(Filed U. S. District Court Oct 31 1955)

I

Plaintiffs are Trustees of the United Mine Workers of America Welfare and Retirement Fund, a charitable trust, with its residence and place of business at 907 Fifteenth Street, N.W., in Washington of the District of Columbia. Trustee John L. Lewis is a citizen of the State of Illinois. Trustee Charles A. Owen is a citizen of the State of Florida. Trustee Josephine Roche is a citizen of the State of Colorado. The Defendant, Quality Coal Corporation, a corporation, was duly organized and exists under and by virtue of the laws of the State of Indiana. Its principal offices are located at 111 South Forest Avenue, Brazil, Clay County, Indiana.

II

The amount in controversy, exclusive of interest and costs, exceeds Three Thousand Dollars ($3,000.00).

III

The United Mine Workers of America Welfare and Retirement Fund was created by contract dated March 5, 1950.

IV

Between the first day of October 1952 and the thirtieth day of September 1955, the Defendant, Quality Coal Corporation, was engaged in the business of operating coal mines in and about Brazil, Clay County, Indiana. On or about the fourth day of October 1952, the said Defendant, Quality Coal Corporation, signed the National Bituminous Coal Wage Agreement of 1950 as Amended September 29, 1952. Said Defendant Corporation signed a National Bituminous Coal Wage Agreement of 1950 As Amended Effective September 1, 1955, or on about August 27, 1955. Pursuant to the terms of the said 1950 Agreement as Amended the Defendant Corporation agreed to pay unto the United Mine Workers of America Welfare and Retirement Fund the sum of Forty Cents (40¢) per ton on all coal produced for use or sale on or after October 1, 1952.

V

Between December 1, 1953, and September 30, 1955, the Defendant, Quality Coal Corporation produced approximately 116,886 tons of coal for use or sale and in accordance with the terms of said National Bituminous Coal Wage Agreement of 1950 as Amended, September 29, 1952, and said Amendment effective September 1, 1955, there became due and owing to the Plaintiffs by the Defendant

Corporation the sum of Forty Six Thousand, Seven Hundred Fifty Four Dollars and Forty Cents ($46,754.40). The said Defendant Corporation made payment on this amount in the sum of Six Thousand, Seven Hundred Ninety Nine Dollars and Thirty Three Cents ($6,799.33), thereby leaving a balance due and owing by the Defendant to the Plaintiffs of Thirty Nine Thousand, Nine Hundred Fifty Five Dollars and Seven Cents ($39,955.07). The Defendant has neglected or failed to pay such amount.

VI

The Plaintiffs have demanded the Defendant Quality Coal Corporation to pay unto them said sum but the Defendant refuses and continues to refuse to make payment.

Wherefore, the Plaintiffs pray this Honorable Court for judgment against the Defendant, Quality Coal Corporation, a corporation, in the amount of Thirty Nine Thousand, Nine Hundred Fifty Five Dollars and Seven Cents ($39,955.07) with interest and costs and additional sum equivalent to Forty Cents (40¢) per ton plus interest and costs on each ton of coal produced for use or sale by the Defendant Corporation in excess of 116,886 tons covering the period December 1, 1953, through September 30, 1955, and subsequent thereto.

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 11921 SEPTEMBER TERM 1956, APRIL SESSION 1957

JOHN L. LEWIS, CHARLES A. OWEN and JOSEPHINE ROCHE, as Trustees of the United Mine Workers of America Welfare and Retirement Fund,

Plaintiffs-Appellees,

v.

QUALITY COAL CORPORATION, a Corporation,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

April 25, 1957

Before LINDLEY, SWAIM and SCHNACKENBERG, *Circuit Judges.*

LINDLEY, *Circuit Judge.* On October 31, 1955, plaintiffs, as trustees of the United Mine Workers of America Welfare and Retirement Fund, brought suit in the district court to recover from defendant, a coal mining operator, so-called royalties claimed to be due on coal mined by the operator. In due course, defendant filed a motion to dismiss on the ground that the complaint failed to state a claim upon which relief could be had, and plaintiffs moved for summary judgment. The court eventually denied the motion to dismiss and entered summary judgment for plaintiffs for $39,955.07. Upon appeal, defendant urges that the court erred in both respects.

As to the assigned error of denial of plaintiff's motion to dismiss, it should be observed that the complaint stated tersely that plaintiffs were trustees of the United Mine Workers of America Welfare Fund, a charitable trust, located in Washington, in the District of Columbia; that the fund had been created by contract dated March 5, 1950, to which defendant was a party; that the amount in controversy exceeded $3,000; that diversity of citizenship existed; that between the first of October, 1952, and the 30th of September, 1955, defendant was engaged in mining coal; that on October 4, 1952, it signed the National Bituminous Coal Wage Agreement of 1950, as amended September 29, 1952; that it signed the Wage Agreement of 1950, as amended September 1, 1955, on or about August 27, 1955; that under these agreements defendant promised to pay into the Fund the sum of 40¢ per ton on all coal produced for sale or use on and after October 1, 1952; that defendant produced between December 1, 1953 and September 30, 1955, approximately 116,886 tons and that, thereby, by virtue of the contracts, there became due plaintiffs the sum of $46,754.40, of which $6,799.33 had been paid, leaving a balance due of $39,955.07.

Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a sufficient complaint consists of a short and plain statement showing that plaintiff is entitled to relief. In *Seymour* v. *Union News Company*, 217 F. 2d 168, we cited with approval our prior decision in *Chicago & Northwestern Ry.* v. *First National Bank of Waukegan*, 200 F. 2d 383, 384 where it was stated: "A complaint is not subject to dismissal unless it appears to a certainty that the plaintiff cannot possibly be entitled to relief under any set of facts which could be proved in support of its allegations. * * * in considering a motion to dismiss, the allegations of the complaint must be viewed in a light most favorable to the plaintiff, and all facts well pleaded must be admitted and accepted as true." From an examination of plaintiffs' averments, it seems obvious to us that it can not be said, as a matter of law, that the complaint states no claim upon which relief can be had under any proper evidence. As the Supreme Court said in *United States* v.

Employing Plasterers Association of Chicago, 347 U.S. 186, 189. "• • • where a bona fide complaint is filed that charges every element necessary to recover, summary dismissal of a civil case for failure to set out evidential facts can seldom be justified. If a party needs more facts, it has a right to call for them under Rule 12(e) of the Federal Rules of Civil Procedure. And any time a claim is frivolous an expensive full dress trial can be avoided by invoking the summary judgment procedure under Rule 56."

In this connection defendant argues that the trustees should have pleaded in the complaint performance upon their own part of the contract upon which suit was brought. But we find in the agreement, which we shall discuss later, no provision that the trustees were obliged to perform any conditions precedent whatsoever before bringing suit to recover the royalties promised to be paid by defendant. It is averred that they are the trustees; that, by virtue of the contract, under which they have been appointed, to which the operator is a signatory, title to all sums collected, or owing, is vested in them. They and they alone have the right to maintain suits to recover that which the operators agreed to pay to them. Under *Title Guaranty & Surety Co.* v. *Nichols*, 224 U.S. 346, it is obvious that no conditions precedent were presented by the record and that if it were asserted that there were conditions subsequent which affected in any manner the liability existing on the face of the record, they should have been pleaded affirmatively by defendant. Yet, there is no evidence or claim of record of any breach of conditions subsequent on the part of the plaintiff trustees. We find nothing in the record to persuade us that the complaint was insufficient.

The remaining issue is whether the summary judgment should have been entered. The court had before it the complaint, to which no answer was ever filed, the answers to interrogatories submitted by plaintiffs to defendant's president establishing the amount of coal produced, the amount of royalties computed thereon at 40¢ per ton and the fact that the defendant had signed and was bound by the agreement of 1950 as amended in 1952 and 1955. In addition,

the court had before it the motion for summary judgment, with affidavits and exhibits. One of the latter, the contract creating "an irrevocable trust * * * under Sec. 302(c) of the Labor-Management Relations Act of 1947", which is of the essence of the controversy here, signed by defendant as one of the coal operators involved, provided, amongst other terms, that by it a fund was created to be known as the United Mine Workers of America Welfare and Retirement Fund of 1950; that there would be paid into this fund by each coal operator, the sum of 30¢, (later, by amendement increased to 40¢) on each ton of coal produced for use or sale; that the fund would be operated by three trustees, all of whom had been selected and comprised the present plaintiffs; that the fund is an irrevocable trust for charitable purposes, *i.e.*, to make payments, from principal or income, of benefits to employees, their families and dependents, for medical or hospital care, and similar charitable benefits; that the trustees have full power and authority to determine who are deserving beneficiaries to whom benefits should be paid; that title to all moneys paid into or owing to said fund was vested in and remained exclusively in the trustees (*United Marine Division* v. *Essex Transportation Co.*, 216 F. 2d 410 (CA 3)); that none of the fund could be subjected to anticipation, alienation, sale, transfer, assignment, charge or encumbrance; that moneys paid into the fund would not constitute wages due from the mine owners; that the operators signing the agreement (including defendant) would furnish monthly computations of the amounts due and make prompt payments; that a previous similar agreement of 1947 was merged with that of 1950 and all funds previously held by the old fund would be delivered to the new one.

Defendant filed no counter-affidavits and no answer; it requested of the district court no opportunity to procure contradictory evidence. Consequently, its position below and in this court is equivalent to that of one who demurs to the evidence submitted, which, for the purposes of the motion, must be accepted as true. Indeed, there is no contradiction whatsoever of the facts necessary to show a right to recover. Neither the averments of the complaint,

nor the affidavits submitted by plaintiffs are denied. The title of plaintiffs and their right to recover the money is not controverted; the amount due is undisputed. Consequently, there was no genuine issue of fact to prevent entry of summary judgment; indeed not to have allowed it would have been error.

Defendant argues that the Attorney-General of the State of Indiana was a necessary party in view of the fact that the suit had to do with administration of a charitable fund. In the Restatement of the Law of Trusts, § 393 (1935) it is said that: "A suit against a third person acting adversely to the trustees of a charitable trust can be maintained by the trustees. • • • In such a case the Attorney General is ordinarily not a necessary party. Thus, if a third person converts property which is held upon a charitable trust, the trustees can maintain an action at law against him to recover the property or damages for the conversion." See also Scott on Trusts, 2nd Ed. (1956), Vol. IV, Sec. 393, p. 2766. Furthermore, the procedural law of the State of Indiana does not apply to proceedings in the federal courts in suits based upon federal legislation. *Gipps Brewing Corp.* v. *Central Mfrs.' Mut. Ins. Co.*, 147 F. 2d 6 (CA-7).

Defendant urges also that United Mine Workers of America, having signed the contract, is a necessary party, but the record discolses that the UMWA has no title to the money in the fund, or right to recover same. It is in no way interested therein, except to see that the trustees perform their trust duties. The Act has been so interpreted in *United Marine Division* v. *Essex Transportation Co.*, 216 F. 2d 410, 412 (CA-3). No person is legally interested in this controversy except plaintiffs, who, as trustees, claim the right to recover, and defendant who has agreed to pay the royalties demanded.

We have examined all of defendant's objections. Many of them were not raised in the trial court and none of them is based upon any evidence submitted. On the undisputed facts of the record, the judgment must be and is affirmed.